



1 removal be denied and that this action be terminated.

## 2 II. DISCUSSION

3 Petitioner asks this Court to stay his removal until his I-130 Petition for Alien relative has  
4 been heard. Petitioner contends that the I-130 petition has been approved and that there is a visa  
5 available to him. (Dkt. #6 at 1).

6 The standard of review for a stay of removal is set forth in *Abbassi v. INS*, 143 F.3d 513  
7 (9th Cir. 1998); *see also Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9<sup>th</sup> Cir. 2001) (en  
8 banc)(concluding that § 1252(f)(2) does not limit the power of federal courts to grant a stay of  
9 removal). Under *Abbassi*, petitioner must show either: (1) the probability of success on the  
10 merits plus the possibility of irreparable harm, or (2) that serious legal questions are raised and  
11 the balance of hardships tips sharply in petitioner's favor. *Abbassi*, 143 F.3d at 514. "These  
12 standards represent the outer extremes of a continuum, with the relative hardships to the parties  
13 providing the critical element in determining at what point on the continuum a stay pending  
14 review is justified." *Andriou*, 253 F.3d at 483 (quoting *Abbassi*, 143 F.3d at 514). If the  
15 applicant shows no chance of success on the merits, however, the injunction should not issue.  
16 *Arcamuzi v. Continental Airlines, Inc.*, 819 F.2d 935, 937 (9<sup>th</sup> Cir. 1987).

17 The Court finds that petitioner meets neither prong of the *Abbassi* test. Petitioner asserts  
18 that despite being ordered removed *in absentia*, he has "numerous reliefs available to him e.g.  
19 cancellation of removal (2) convention against torture and of course his family based petition by  
20 sister." (Dkt. #6 at 2). Petitioner neither explains nor provides any support for his assertion that  
21 his removal should be stayed. Although the Court ordered petitioner to file an amended habeas  
22 petition, he has not done so. Therefore, petitioner has provided no evidence to support this  
23 Court's grant of a stay of his removal.


24 Moreover, petitioner has not demonstrated that this Court has jurisdiction under the REAL  
25 ID Act to stay his removal pending a collateral claim before another court. The REAL ID Act  
26 amended the Immigration and Nationality Act, eliminating federal habeas corpus jurisdiction

over final orders of removal. *See* Pub. L. No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005). Under Section 106 of the Act, “a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of [the Immigration and Nationality Act].” 8 U.S.C. § 1252(a)(5). “A request to stay an order of removal based on a pending collateral claim does not escape the jurisdiction stripping provisions of the REAL ID Act.” *Mancho v. Chertoff*, \_\_\_ F. Supp. 2d \_\_\_, 2007 WL 902072, \*2 (D.D.C. 2007) (citing *Formusoh v. Gonzales*, No. 3-07-CV-0128-K, 2007 WL 465305 (N.D. Tex. Feb. 12, 2007) (dismissing for lack of subject matter jurisdiction habeas petition of petitioner seeking stay of removal pending resolution of an I-130 petition and an I-485 adjustment of status petition); *Tale v. United States Dep’t of Homeland Sec.*, 2006 U.S. Dist. LEXIS 47577, at \*1 (S.D. Tex. July 13, 2006) (finding lack of jurisdiction to grant petitioner preliminary and permanent injunctions barring his deportation prior to the resolution of his claims pending before an immigration judge.)). Absent statutory or legal authority that creates an exception to the REAL ID Act, this Court lacks subject matter jurisdiction over petitioner’s request for a stay of removal during the pendency of his I-130 petition. Accordingly, because the Court is without jurisdiction to grant petitioner’s requested relief, he is unable to show either a probability of success on the merits plus the possibility of irreparable harm or that serious legal questions are raised and the balance of hardships tips in his favor.

### III. CONCLUSION

For the foregoing reasons, I recommend that petitioner’s motion for stay of removal, Dkt. #6, be denied, and that this action be dismissed. A proposed order accompanies this Report and Recommendation.

DATED this 8th day of May, 2007.

  
 JAMES P. DONOHUE  
 United States Magistrate Judge